

HANSEN BROTHERS

IBLA 78-128

Decided July 31, 1979

Appeal from decision of Eastern States Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer. ES 15920.

Affirmed.

1. Oil and Gas Leases: Applications: Generally – Oil and Gas Leases: Rentals

Where the rental payment accompanying a noncompetitive oil and gas lease offer for acquired lands, filed over-the-counter, is deficient by more than 10 percent due to an increase in the rental rate subsequent to the filing of the offer, and Bureau of Land Management requests submission of the deficient rental within 30 days, BLM may properly reject the lease offer when the additional rental is not submitted within the 30 days.

2. Oil and Gas Leases: Applications: Generally – Oil and Gas Leases: Stipulations

Where Bureau of Land Management requests within 30 days the execution of special stipulations prepared by the Forest Service for acquired lands embraced in a noncompetitive oil and gas lease offer, filed over-the-counter, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days.

3. Oil and Gas Leases: Applications: Generally

Where Bureau of Land Management requests within 30 days either (1) submission of a statement that an over-the-counter offeror for a noncompetitive oil and gas lease of acquired lands is not a partnership or (2) compliance with 43 CFR 3102.3-1 if it is a partnership, BLM may properly reject the lease offer when the offeror fails to act in either manner within the 30 days.

APPEARANCES: Leo H. Hansen, Esq., Hansen, Eggers, Berres & Kelley, S. C., Beloit, Wisconsin, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Hansen Brothers has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting noncompetitive oil and gas lease offer ES 15920 filed "over-the-counter."

On January 12, 1976, appellant submitted an oil and gas lease offer for acquired lands situated in the NE 1/4 sec. 27, T. 14 N., R. 11 W., Michigan meridian, Newaygo County, within the Manistee National Forest. The offer was accompanied by advance rental in the amount of \$80 and a "Certificate of Persons Conducting Business Under Assumed Name" listing Alvin H. Hansen and Leo H. Hansen as the owners of Hansen Brothers.

By a decision dated September 23, 1977, BLM required appellant to: (1) execute special stipulations prepared by the Forest Service, U.S. Department of Agriculture; (2) submit additional rental in the amount of \$80 required under 43 CFR 3103.3-2, 42 FR 1033 (Jan. 5, 1977); and (3) comply with the provisions of 43 CFR 3102.3-1 if appellant was a legal partnership or, if not, to submit a statement to that effect. Failure to comply with the requirements within 30 days from receipt of the decision would result in rejection of the lease offer.

Appellant submitted none of the requested items and its lease offer was accordingly rejected. In its statement of reason for appeal appellant does not contest the propriety of any of BLM's requests. Instead, appellant argues that it did not have an opportunity to comply prior to rejection of its lease offer. It asserts that it delayed in complying because the business matters of Hansen Brothers were only discussed when the two owners had a chance to get together, one living in Wisconsin and the other in Michigan. Furthermore, because BLM had taken almost 2 years to reply to appellant's lease offer they "felt no

rush in answering." Appellant has still not submitted any of the required materials.

[1] A noncompetitive oil and gas lease offer for acquired lands, filed "over-the-counter," may be rejected when the accompanying rental payment is deficient by more than 10 percent. 43 CFR 3103.3-1; George S. Swan, 39 IBLA 47 (1979).

In the present case, the BLM Office chose to notify appellant that the rental rate had been increased and to request submission of the additional rental within 30 days, rather than rejecting the lease offer outright. See Mobil Oil Corp., 35 IBLA 375 (1978).

Appellant had ample time to submit the additional rental. It was proper for BLM to reject the oil and gas lease offer on this basis.

[2] Execution of the special stipulations prepared by Forest Service for the acquired lands embraced in appellant's oil and gas lease offer was mandatory. Failure to submit executed stipulations would subject the offer to rejection. Sallie B. Sanford, 22 IBLA 289 (1975); 43 CFR 3109.3-1. The special stipulations were not submitted. It was likewise proper for BLM to reject appellant's oil and gas lease offer on this basis.

[3] Appellant was also required either to state that it was not a partnership or, if a partnership, to comply with the provisions of 43 CFR 3102.3-1. If appellant was a partnership, compliance with 43 CFR 3102.3-1 as to the submission of information regarding the status of appellant as a partnership was mandatory and failure to comply subjects the lease offer to rejection. 43 CFR 3111.1-2(a)(2); cf. Norcross Partners, 31 IBLA 181 (1977). If appellant was not a partnership, failure to submit the requested information likewise subjects the lease to rejection. Lee S. Bielski, 39 IBLA 211 (1979). It was proper for BLM to reject appellant's oil and gas lease offer on this basis.

Appellant is not excused from complying with any of the requested items because it only transacted business when the two brothers happened to meet. Furthermore, appellant was not entitled to delay compliance because BLM delayed replying to its lease offer. It is within the discretion of the Department of the Interior to decide whether to issue an oil and gas lease for acquired lands upon the filing of an "over-the-counter" offer. James W. Canon, 84 I.D. 176 (1977); General Crude Oil Company, 18 IBLA 326 (1975). This discretion is not delimited by any prescribed time.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

We concur.

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge

